

CONFIDENTIAL AND PRIVILEGED

March 23, 1982

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MEMORANDUM

TO: Alexander Holtzman
Carl Adkins

FROM: Arnold & Porter

RE: Barclay -- Proposed Remedies

We should consider asking the Federal Trade Commission to take the following actions with respect to Barclay:

First: The Commission should forthwith issue a public announcement stating that it has determined, on the basis of unanimous reports from independent experts retained by the Commission, who are among the country's leading authorities in the field of tobacco science, that Barclay's "tar" yield is not accurately measured by the present FTC method. This announcement should state that all of the experts consulted by the Commission agree that Barclay yields substantially higher "tar" than advertised by Brown & Williamson, or reported by the FTC in its "Report of 'Tar', Nicotine and Carbon Monoxide of the Smoke of 200 Varieties of Cigarettes," dated December 15, 1981. The smoking public is entitled to be immediately

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informed of the experts' conclusion.

Second: The Commission should issue an order (or announcement) stating that the Commission is amending its December 1981 report to delete the "tar" yields shown therein for the various varieties of Barclay, ^{because} The "tar" figures set out in the Commission's December report are not accurate, for the reasons stated by the Commission's expert consultants. *Such announcement should further state that Barclay's "tar" delivery (and that of other products) is comparable to the same*

authority? Third: Brown & Williamson should be immediately ordered by the Commission forthwith: (a) to cease making any direct or indirect representations in its advertising, packaging or promotional materials as to Barclay's "tar" yield ~~per FTC method~~; (b) to cease and desist from making any representation or advertising claim that Barclay is 99% "tar" free; and (c) to incorporate a clear and conspicuous statement in all Barclay advertising, *the disclosure required by the voluntary agreement,* in lieu of ~~the present representation as to "tar"~~, to the effect that Barclay's "tar" delivery is not properly determinable by present FTC methods. *(1) is not properly determinable by present FTC method.*

Fourth: If Brown & Williamson does not forthwith comply with such order, the Commission should promptly file suit against Brown & Williamson in a federal district

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court to obtain an injunction ordering the remedies described in the foregoing paragraph⁹ and such additional relief as may be appropriate to dissipate the effects of Brown & Williamson's false and misleading claims.

Fifth: Brown & Williamson should be ordered by the Commission forthwith to recall all cigarette packages and cartons containing a legend or statement of Barclay's "tar" yield per FTC method. ~~Such statements are false and misleading.~~ In addition, Brown & Williamson should be directed forthwith to recall and destroy all ^{advertising and} ~~point of sale~~ and ~~other~~ promotional materials which contain a statement of Barclay's "tar" yield.

Sixth: The Commission's laboratory should promptly replace the cigarette holding device presently used in its apparatus with the holding device which has been proposed by Philip Morris, in order to insure valid and reliable comparative "tar" results for all cigarette brands on the market. All cigarette manufacturers should be immediately notified of this modification and should thereafter be required to report "tar" results "by FTC method" only in accordance with test results obtained using this

Consider
OK point
of view:
once holder
validated,
only require
its use as
to problem
products.

This requires an amendment of the method (at least by publication in the Fed. Reg., if not by first inventory comments); simply not for the lab to change holder might not stand up. Perhaps FTC could adopt holder on interim basis and then make comments as to permanent modification.

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holding device.

Our memorandum to the Commission which is due April 5, 1982, should emphasize that this inquiry has been pending for nearly ten months; that independent experts retained by the Commission unanimously confirm the validity of the objections to the Barclay filter expressed by Philip Morris and other companies; that the integrity of the Commission's test program will be ^{further} ~~irreparably~~ damaged if there is any further delay in remedial measures; and that the Commission cannot and should not tolerate any further false and misleading claims by Brown & Williamson with respect to Barclay's "tar" yield.

has already been
compromised and

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